

Utah Solid and Hazardous Waste Control Board
Meeting Minutes
October 9, 2008
1:30 p.m.

Board Members Present: Carlton Christensen (Chair), John Newman (Vice Chair), Michael Brehm, Scott Bruce, Kory Coleman, Ryan Dupont, Craig Forster, Kevin Murray, Dennis Riding and Rick Sprott.

Board Members Excused: Craig Anderson, Jeff Coombs, and Gary Mossor.

Staff Members Present: Scott Anderson, Brad Johnson, Tom Ball, Shane Bekkemellom, Ralph Bohn, Ed Costomiris, Marty Gray, Arlene Lovato, Dale Marx, Brad Maulding, Terry Montgomery, Allan Moore, Cheryl Prawl, Boyd Swenson, Melissa Turchi, Don Verbica, John Waldrip, Otis Willoughby, and Raymond Wixom.

Others Present: Dennis Astill, John Bate, Brad Cahoon, Russell Christensen, Ben Clayton, Larry Dushane, Judy Fahys, David Gibby, Dave Gosen, Troy Johnson, Richard McMullin, Jeff Mensinger, Mark Mesesan, Milie Murry, Tim Orton, Melissa Scales, Kris Snow, Christopher Thomas, Matt Tomal, Sheila Vance, and Angela VanDam.

I. Call to Order

John Newman (Vice-Chair) called the meeting to order at 1:35 p.m. Craig Anderson, Jeff Coombs, Gary Mossor, and Dennis Downs were excused from the meeting.

II. Approval of Meeting Minutes for the September 11, 2008 Board Meeting

Kory Coleman moved to approve the September 11, 2008 Board meeting minutes. The motion was seconded by Craig Forster and **UNANIMOUSLY CARRIED**.

III. Underground Storage Tanks Update

Brad Johnson informed the Board members that the Division of Environmental Response and Remediation (Division) has received the 2008 Actuarial Report for the Petroleum Storage Tank (PST) Fund. However, it was not received in time to be included in the Board Packet sent out previously. A copy of the Executive Summary of the Actuarial Report was distributed to the Board members. (A copy of this Executive Summary is available with the meeting minutes.) The report detailed that the cash balance of the Fund is predicted to continue to remain somewhere from 9 to 12 million dollars for the foreseeable future, while the equity balance is estimated to be at approximately -30 million dollars. Currently, there are approximately 210 sites that rely on the PST Fund for cleanup. Based on the information contained in the report, the Division is comfortable with its current status. In previous actuarial reports, it was predicted that the Fund would run out of money. However, due to the increase in the surcharge on fuel from ¼ cent to ½ cent, and changes in administrative procedures in the Division, the cash balance of the PST Fund has remained stable.

Michael Brehm asked if the owner/operators consider the changes in the administration of the PST Fund to be beneficial, and if it makes it difficult for them to determine if it is advantageous to continue to utilize the Fund for financial assurance. Mr. Johnson explained that prior to making any change to the Underground Storage Tank (UST) Program, the Utah UST Advisory Task Force and other interested parties are consulted and provided an opportunity to comment on the proposed changes. As a result of these preliminary discussions, the Division has encountered little resistance when changes are proposed.

Mr. Brehm then asked if any adjustments need to be made to the Actuarial Report based upon the market and/or the economy we currently have today. Mr. Johnson stated that the Division constantly monitors the PST Fund

and if a situation arose that warranted a change, the Division would take the steps necessary to make the adjustments.

Carlton Christensen continued by asking if the projected decline in the Fund balance from 2008 to 2014 takes different types of USTs, such as steel or double walled tanks, into consideration. Mr. Johnson explained that the Actuarial Report is primarily a statistical analysis of data submitted by the Division to the Actuary, and nothing in the analysis takes that type of specific information into consideration.

Mr. Johnson then provided the Board members with a brief update on the status of the Gunnison Top-Stop facility. As required, Wind River Petroleum (Wind River) has submitted their revised Corrective Action Plan (CAP). The two biggest problem areas continue to be the Casino Star Theater, and the Jeremy and Marlo Taylor residence. The Division is currently reviewing the revised CAP and once completed, will provide any necessary comments to Wind River in order to decide what steps need to be taken to further cleanup the contamination.

IV. Appointment of Executive Secretary for Anderson Geneva property (Board Action Item)

Scott Anderson briefly summarized the corrective action activities at the Anderson/Geneva property in Utah County. Under the Corrective Action Program, areas of contamination are identified as Solid Waste Management Units (SWMU). The nature and extent of contamination at each SWMU is determined and a cleanup/management remedy is ultimately selected and implemented. Located within three of the SWMUs were leaking underground storage tanks. These tanks were removed several years ago but closure of the area is still subject to the underground storage tank closure standards administered by the Division of Environmental Response and Remediation (DERR). The SWMUs in which the tanks were located are subject to the corrective action/closure standards administered by the Division of Solid and Hazardous Waste (DSHW).

To eliminate the dual regulatory jurisdiction for essentially the same site created by this scenario, and after consultation with the respective divisions and the Attorney General's Office, Rick Sprott, Executive Director, DEQ, appointed Dennis Downs as the Executive Secretary for all UST sites located on the Anderson Geneva Property. This appointment will allow Mr. Downs to approve of remediation and closure of these SWMUs and the tank sites without duplicative review and oversight by DERR's Underground Storage Tank program.

A memo from Rick Sprott appointing Dennis Downs as the Executive Secretary for UST issues at the Anderson Geneva Facility was provided to the Board in their October packet. This appointment is subject to Board approval. The DSHW recommends the Board approve this appointment.

Carlton Christensen asked if these tanks were covered under any insurance fund such as the PST Fund for potential reimbursement. Brad Johnson explained that because they are USTs and because they were in the ground they would be subject to the PST Fund program. However, the tanks were removed in the early 1990's, which precludes use of the PST Fund.

Dennis Riding asked if there is a precedent for this kind of appointment. Scott Anderson explained that similar issues were handled the same way by the Air Quality and Water Quality Boards. Mr. Riding asked if the DSHW expects to have the same type of latitude for cleanups that DERR would, such as risk-based closures. Mr. Anderson explained that the DSHW uses risk-based cleanup standards where appropriate, similar to the DERR standards.

Dennis Riding moved to approve the appointment of Dennis Downs as the Executive Secretary for all UST sites located on the Anderson Geneva Property. The motion was seconded by John Newman and UNANIMOUSLY CARRIED.

V. Anderson Geneva Development Inc. Presentation

Dennis Astill, Project Manager and General Counsel for the Anderson Geneva Development project provided an update on the remediation and development activities at the facility. (A copy of the presentation is available with the meeting minutes.)

The Geneva property sits on the edge of Utah Lake in the middle of Utah County covering approximately 1700 acres. Over 200 SWMUs have been identified on the property and are in various stages of assessment and cleanup under the corrective action program administered by the DSHW. Redevelopment considerations include freeway interchanges, a new expressway through the site, an inter-modal hub for commuter rail, bus and light rail, and mixed industrial and residential uses.

Michael Brehm asked if the Environmental Protection Agency (EPA) is involved in the remediation activities. Mr. Astill explained that the EPA is aware of the project but has deferred to DEQ since authority to implement the corrective action program has been delegated to the State of Utah.

Dennis Riding asked if there were any other governmental partners involved because construction of the steel facility was part of a Defense Department initiative. Mr. Astill stated that the facility was operated under contract by the federal government for about 2 ½ years before it was sold. In theory, the federal government could be involved in the site, but Anderson/Geneva hasn't looked to the federal government for any resources to remediate the site.

Michael Brehm asked how different development elements and interests will co-exist. Mr. Astill explained that site management plans and other restrictions are created to govern the manner in which different development interests will come together. For example, an environmental covenant is placed on each parcel that is sold so that the buyer is bound by the site management plan and the restrictions for development on the property. Cleanup levels will dictate the type of development that can occur on the various parcels. The DSHW retains the right to come onto the property to ensure covenants are being complied with. Mr. Astill stated that the goal is to get the major remediation activities out of the way within the next three years.

Carlton Christensen asked when the first residential component will be completed. Mr. Astill projected such development will take place within the next eighteen months. Ryan Dupont asked about public vs. private Brownsfield sites. Mr. Astill noted that EPA does offer grants for redevelopment of Brownfield sites but to date Anderson/Geneva's project has been a private effort working with the DSHW. Brad Johnson explained that Brownsfield money is available to the tanks program, CERCLA and now RCRA.

Mr. Christensen asked what Mr. Astill would recommend to someone who wanted to take on a project like this. Mr. Astill stated that every project has a learning curve and developers need to have an end point as remediation work is completed.

VI. Hazardous Waste Facilities Section

A. Stipulation and Consent Order between the Board and ATK Launch Systems, Inc. (Bacchus Facility) (Board Action Item)

Brad Maudling reviewed the proposed Stipulation and Consent Order (SCO) to resolve Notice of Violation and Order for Compliance (NOV/CO) (No. 0801004).

The NOV/CO was issued to ATK on February 13, 2008 for violations of R315 of the Utah Administrative Code that occurred at the Bacchus Facility in West Valley City, Utah. The NOV/CO identified violations that were documented through self-reporting by the facility and during an inspection conducted by DSHW inspectors.

Included in the proposed SCO is a penalty of \$131,310.00 which has been negotiated and agreed upon for settlement of the NOV/CO. All violations cited in the NOV/CO have been resolved and ATK is closing septic System #3 (SS-3) in accordance with the applicable regulations.

The public comment period for this SCO began on August 21, 2008 and ended on September 22, 2008. No comments were received during the public comment period.

It was motioned by Kory Coleman and seconded by Craig Forster and unanimously carried to approve the proposed Stipulation and Consent Order (SCO) No. 0803010 to resolve Notice of Violation No. 0801004 between the Board and ATK Launch Systems Inc. (ATK).

VII. Used Oil/Planning Section

A. Stipulation and Consent Order between the Board and Golden Eagle Oil Refinery, Inc. (Information Item)

Cheryl Prawl presented a proposed Stipulation and Consent Order (SCO) between the Board and Golden Eagle Oil Refinery, Inc. to resolve (2) two Notices of Violation.

Golden Eagle Oil Refinery, Inc. is a permitted used oil processor, transporter and marketer located in Woods Cross, Utah. Based on Golden Eagle's annual reports for calendar year 2007, it transported approximately 2,056,000 gallons of used oil and processed and marketed approximately 7,770,000 gallons of burner fuel which were sold to facilities in and outside of Utah.

On December 20, 2006, and April 9, 2007, representatives of the DSHW inspected Golden Eagle's Woods Cross facility. Based on the inspections and findings documented during a supplemental investigation at the Salt Lake Garfield & Western Railway Company on February 1-2, 2007, two Notices of Violation and Orders for Compliance (Numbers 0703011 and 0711028) dated August 28, 2007 and January 2, 2008 were issued to Golden Eagle.

To resolve **both** NOV/COs, an SCO was negotiated. Under the terms of the proposed SCO, Golden Eagle will pay a penalty of \$55,000 in four quarterly installments. The first payment will be due 90 days from the effective date of the SCO.

A 30-day public comment period on the proposed SCO was initiated on September 30, 2008 and will end on October 29, 2008. This is an information item and will be presented as an action item for the Board at its next meeting.

Kevin Murray questioned if this is the same facility that agreed to an SCO last year with a penalty of approximately \$80,000. Ms. Prawl explained that Golden Eagle is the same company that was before the Board last year. The \$80,000 penalty will be paid over a five-year period, and Golden Eagle is still paying on the SCO from last year. Ms. Prawl further explained that the proposed SCO includes additional penalty increases for repeat violations.

Rick Sprott stated he has some major concerns with this facility and the violations noted. Mr. Sprott felt this trend demonstrates that the company does not appear to be mindful of its environmental responsibilities and asked if there was any indication of improvement. Ms. Prawl stated the company has less than 50 employees that work at the facility and they do not have a designated environmental person working for them.

John Newman asked if the proposed penalty is the maximum penalty allowed under the regulations. Ms. Prawl indicated that the penalty as proposed does not represent the statutory maximum. Mr. Newman recalled this facility having violations even prior to the ones noted last year. Ms. Prawl confirmed that this facility has had a number of past violations.

Michael Brehm asked if Golden Eagle was still operating. Ms. Prawl indicated the facility is currently in operation.

Carlton Christensen asked if there were any other compliance issues since the issuance of the NOV's. Ms. Prawl stated that, not to her knowledge, but the facility has not been inspected since April 2007. Ms. Prawl explained that inspections are done annually and staff did not go out to the facility during the SCO negotiations. Mr. Christensen expressed his concern that the continuation of non-compliance may necessitate more frequent inspections.

Kevin Murray expressed major concerns with this facility and compared it to Ecotek. Mr. Murray wants to make sure facilities who give Golden Eagle their oil for proper disposal don't end up having to be liable if a bad situation arises. Mr. Murray stated that, although the State is issuing a substantial penalty, he is not sure how to proceed because he recognizes that if the facility is strapped too heavily, it may cause additional complicated issues.

Rick Sprott asked if other facilities handle used oil. Ms. Prawl explained that many companies handle used oil as there is a lot of competition for it. Mr. Sprott asked if these violations constitute an imminent hazard. Ms. Prawl stated no, as the used oil that was brought in and illegally stored had actually been tested by a California marketer and determined to not be a hazardous waste. Also, the facility is now just operating at the Woods Cross location, which has secondary containment, insurance, etc.

John Newman asked if there were other options to ensure that the environment is protected as well as other entities that may be hurt by Golden Eagle's disregard for the rules. Kevin Murray asked if the Used Oil Program would be burdened if additional inspections were conducted.

Scott Anderson explained that Golden Eagle's compliance status has been an issue for many years. The DSHW shares the Board's concerns and over the years, has tried to maintain a balance between appropriate sanctions for the non-compliance and allowing them to operate. Mr. Anderson also noted that a change in day-to-day management is occurring and should result in improved compliance.

Carlton Christensen asked if the entire penalty would become due upon the sale of the company. Ms. Prawl explained that if such a sale were to occur, the total penalty would be due within thirty days of the sale.

Dennis Riding asked how gasoline companies know the used oil companies they utilize are in compliance. Ms. Prawl stated that some companies come in and look through the files to verify a used oil company's compliance status. In addition, SCO's are published on the DSHW's website. Scott Anderson noted the DSHW does not maintain a compliance history or status of all facilities compared to each other. Mr. Riding felt it would be a good thing to have this information available so if a company is interested in having its waste oil removed, it could look and see if the facility they propose to take their waste oil has a favorable compliance track record.

Ryan Dupont asked if it was possible for the Board to request that an inspection be conducted prior to the next meeting. Board members agreed that even though it may be a burden to the Used Oil staff, this facility needs to be on a more frequent inspection schedule.

John Newman felt the consensus of the Board is to know if violations currently exist at Golden Eagle before it can make a decision at the next meeting.

It was motioned by John Newman and seconded by Kory Coleman and unanimously carried that the Acting Executive Secretary (Scott Anderson) evaluate Golden Eagle's compliance status (conduct an inspection of the facility) prior to the next Board meeting, prepare an analysis of what is presently taking place at the facility and to see how they are doing regarding their past violations and consider an increase in inspection frequency at the facility in light of the Board's discussion.

Michael Brehm stated that the only positive thing he heard from the conversation was the discussion by Scott Anderson regarding the other owner's level of commitment. Mr. Brehm would appreciate the opportunity to hear from this owner and give him the opportunity to explain what is currently taking place at the facility. Mr. Anderson stated that owner currently lives in California but he will be contacted to see if he could address the

Board at the next meeting. Mr. Anderson also stated that a site visit will be conducted, and the DSHW will consider ways to increase its presence at the facility.

VIII. Commercial/Federal Facilities

A. Stipulation and Consent Order between the Board and Northeast Casualty Real Property (Clive Facility) (Board Action Item)

Ed Costomiris presented a proposed Stipulation and Consent Order (SCO), No. 0803009, to resolve Notice of Violation No. 0801001 issued on January 29, 2008. The violations have been resolved. The SCO includes a negotiated penalty of \$29,178. The public comment began on September 2, 2008, and concluded on October 2, 2008. No comments have been received. The Executive Secretary recommends the Board approve the SCO.

It was motioned by John Newman and seconded by Kevin Murray and unanimously carried to approve the proposed Stipulation and Consent Order (SCO) No. 0803009 to resolve Notice of Violation No. 0801001 between the Board and Northeast Casualty Real Property (Clive Facility).

B. EnergySolutions LLC request for a site specific treatment variance for cemented uranium extraction process residues (Information Item)

Otis Willoughby reviewed the request for a one-time, site-specific treatment variance submitted by EnergySolutions LLC for the Mixed Waste Facility. Mr. Willoughby explained this treatment variance request is very similar to the one that was presented and approved at the last Board meeting. It is the same waste and the same process, the only difference is that it is a different DOE generator doing the same work.

The Mixed Waste Facility proposes to continue receiving cemented monoliths containing enriched uranium residuals. This material retains hazardous waste codes for cadmium, chromium, and lead. The generator has encapsulated the waste in concrete for security reasons. This waste meets all license conditions for radioactive waste disposal at the facility.

EnergySolutions proposes to receive this waste for macroencapsulation in the Mixed Waste Landfill Cell rather than chemical stabilization, as required. This request is based on the fact that the waste has been already been encapsulated in concrete at the generator's site. Treating this waste by the required method would mean grinding the waste and potentially exposing workers to unnecessary contamination.

The proposed treatment will further encapsulate the waste and protect it from contact with precipitation, thereby decreasing the potential of leaching. EnergySolutions proposes to receive approximately 1,100 cubic feet of this waste. Final disposal of the waste will occur in the Mixed Waste Disposal Cell at the EnergySolutions Mixed Waste Facility.

This is an information item before the Board. The comment period will run from October 9, 2008 until November 10, 2008. A public hearing on this issue will be held in the Tooele County Courthouse on October 23, 2008 at 7:00 p.m.

IX. Chemical Demilitarization.

A. TOCDF Update

TOCDF continues to process mustard ton containers. Approximately 2,400 of the 6,400 have been processed, totaling about 40% complete. The easiest low heel/low mercury mustard ton containers have been processed. TOCDF has now begun processing the high heel/low mercury ton containers utilizing the heel transfer system and the metal parts furnace. The high mercury ton containers will be treated when the carbon filter system is in place next year.

**B. Stipulation and Consent Order Between the Board and Deseret Chemical Depot (DCD)
(Board Action Item)**

Tom Ball reviewed the proposed Stipulation and Consent Order (SCO) to resolve Notice of Violation (NOV) No. 0712032, issued to Deseret Chemical Depot (DCD), the Chemical Agent Munitions Disposal System (CAMDS), and the Tooele Chemical Agent Disposal Facility (TOCDF) in February 2008. Both TOCDF and CAMDS are located within the boundaries of DCD. All three facilities have permits and must comply with state and federal laws regarding hazardous waste. One NOV is issued to all three facilities because they operate under one EPA ID Number. The NOV contains 74 violations that were documented through self-reports from the facilities and during inspections performed by Division staff. A total penalty of \$72,860.25 has been negotiated and agreed upon for settlement of the NOV. All violations cited in the NOV have been corrected.

The public comment period for this SCO ended on October 8, 2008. No comments were received. It is the recommendation of the Executive Secretary that the Board approve this SCO.

It was motioned by Dennis Riding and seconded by Rick Sprott and unanimously carried to approve the proposed Stipulation and Consent Order (SCO) No. 0805011 to resolve Notice of Violation (NOV) No. 0712032, issued to Deseret Chemical Depot (DCD), the Chemical Agent Munitions Disposal System (CAMDS), and the Tooele Chemical Agent Disposal Facility (TOCDF).

X. Other Business

- A.** The next Board meeting will be held on November 13, 2008 at 1:30 p.m., in the Utah Department of Environmental Quality, (Conference Room 101), located at 168 North 1950 West, (Bldg. #2), SLC.
- B.** Board members discussed the potential cancellation of the December Board meeting. It will be determined in the November Board meeting if a December Board meeting is required, and if not, it will be canceled.
- C.** Carlton Christensen mentioned that Salt Lake City/County Landfill is currently conducting green waste recycling, including generating electricity from the methane gas at the landfill. Mr. Christensen stated that, if the Board was interested, a tour could be conducted. Salt Lake City/County Landfill has offered to host the tour. The Board could hold the tour in conjunction with a regularly scheduled Board meeting. The Board would tour the facility in the morning and have its regular meeting in the afternoon back at the UDEQ offices.
- D.** Rick Sprott extended an invitation to the Board to come to UDEQ offices to hear Salt Lake City Mayor Ralph Becker on November 17, 2008 at 10:00 a.m. Mr. Sprott explained that this idea was generated from one of the Department's leadership development groups, which recommended that twice a year, a distinguished speaker be invited to UDEQ to address the employees. The first speaker was Governor Huntsman. Mayor Becker has been requested to speak on environmental issues. Carlton Christensen asked if the webcast is available outside the Department. Board members will be informed on how to access the webcast at the next meeting.

XI. Adjourn.

The meeting adjourned at 3:07 p.m.